

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ANDREW AVILA,

Plaintiff,

v.

FELDER, *et al.*,

Defendants.

Case No. 1:21-cv-01510-JLT-BAM (PC)

ORDER DENYING MOTION TO APPOINT
COUNSEL

(ECF No. 34)

Plaintiff Andrew Avila (“Plaintiff”) is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983.

On January 23, 2025, the Court directed Plaintiff to file a second amended complaint within thirty days. (ECF No. 29.) Following two extensions of time, Plaintiff’s second amended complaint or notice of voluntary dismissal is currently due on or before April 23, 2025. (ECF Nos. 31, 33.)

Currently before the Court is Plaintiff’s motion to appoint counsel, filed April 4, 2025. (ECF No. 34.) Plaintiff states that he has bad vision and can’t see well. Plaintiff only has one eye with mediocre vision. Plaintiff is not knowledgeable with law and does not possess a high school diploma or GED. Plaintiff is proceeding without counsel and has been assisted by numerous inmates to move his case forward. Plaintiff is incarcerated with limited access to legal resources. Plaintiff is almost sixty years of age and due to inadequate medical treatment and care in state

1 prison, Plaintiff has lingering medical problems. (*Id.*)

2 Plaintiff is reminded that the filing fee has been paid and Plaintiff is not proceeding *in*
3 *forma pauperis* in this action. The Court is not aware of any authority that would allow the
4 appointment of counsel for a litigant in a civil action who is not proceeding *in forma pauperis*.

5 Even if Plaintiff were proceeding *in forma pauperis* in this action, Plaintiff does not have
6 a constitutional right to appointed counsel in this action, *Rand v. Rowland*, 113 F.3d 1520, 1525
7 (9th Cir. 1997), *rev'd in part on other grounds*, 154 F.3d 952, 954 n.1 (9th Cir. 1998), and the
8 court cannot require an attorney to represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1).
9 *Mallard v. U.S. Dist. Court for the S. Dist. of Iowa*, 490 U.S. 296, 298 (1989). However, in
10 certain exceptional circumstances the court may request the voluntary assistance of counsel
11 pursuant to section 1915(e)(1). *Rand*, 113 F.3d at 1525. The Court has considered Plaintiff's
12 request, but does not find the required exceptional circumstances.

13 Accordingly, Plaintiff's motion to appoint counsel, (ECF No. 34), is HEREBY DENIED.
14 Plaintiff's second amended complaint or notice of voluntary dismissal remains due on or before
15 April 23, 2025.

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17 IT IS SO ORDERED.

18 Dated: April 7, 2025

19 /s/ Barbara A. McAuliffe
20 UNITED STATES MAGISTRATE JUDGE
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